

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4026 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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HANSABEN M BHOYA

Versus

STATE OF GUJARAT  
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Appearance:

MS VINITA VINAYAK FOR MR DM THAKKAR for Petitioners  
MS HANSA PUNANI AGP for Respondent No. 1  
M/S MG DOSHIT & CO for Respondent No. 2  
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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 03/03/2000

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioners who are serving as primary teachers in different Ashram Shalas in Valsad District and possessed requisite qualification for the post of primary teacher have brought under challenge the legality and validity of the impugned action of the respondents in depriving and denying the opportunity to them to compete the selection for the post of primary teacher.

2. As per Government Resolution dated 1.9.1973, at

Annexure A to the petition, all the teachers serving in Ashram Shalas in the State of Gujarat are eligible for absorption in the schools run by the District Panchayat Education Committee. In the month of June 1987, District Panchayat Education Committee invited applications for appointment of primary teachers by issuing a public advertisement in daily Gujarati Newspaper "Gujarat Mitra" and pursuant to the said advertisement the petitioners have applied for selection by sending their application in time by Registered Post A.D. Notwithstanding the above fact the respondents did not hold selection for a period of about 2 years and suddenly decided to call some candidates only for selection in an absolutely arbitrary and illegal manner, inasmuch as, by not inviting fresh applications from amongst the candidates who have become eligible after the date of inviting applications i.e., June 1987, they are deprived of and denied their right to compete in the selection though they are fully qualified. It is contended that it is incumbent upon the respondents to give the petitioners chance to compete in the selection. Therefore, it is contended that the impugned action is violative of Articles 14 and 16 of the Constitution of India and same is required to be quashed and set aside.

3. On the aforesaid premises it was prayed to issue a writ of mandamus or any other appropriate writ, direction or order for quashing and setting aside the impugned action of the respondents in not calling the petitioners for the selection as Primary Teachers and further be pleased to direct the respondents to allow the petitioners to compete the selection and to appoint the petitioners as Primary Teachers, in the light of Government Circular dated 1.9.1973, subject to their merits and suitability.

4. The petition is contested by respondent No.1, Mr. N.R. Chaudhari, District Primary Education Officer, Valsad by filing affidavit in reply. Learned counsel Ms. Vinita Vinayak is present for the petitioners. Ms. Hansa Punani, A.G.P. is present on behalf of respondent No.1 whereas none is present on behalf of respondent No.2.

5. Having heard learned advocates for the parties and on having perusal of the averments made in the petition as well as the contention advanced in the affidavit in reply, it is seen that the applications for the post of primary teachers were called by issuing a public advertisement which was published on 13.8.1987 and pursuant to the same many applications were received by

the department. Interview, however, could not be held immediately due to economy measure and other administrative reasons. The Government issued direction to fill up the posts of primary teachers on 24.5.1988. Interview was held in July 1988. Pursuant to the advertisement respondents had received 1991 applications of which 1153 were found eligible. The respondents decided to call only those applicants who have obtained 55 marks out of 100 having regard to the number of vacancies and in view of Circular dated 14.7.1983. On having perusal of the said circular it is manifest that according to the said scheme, total marks which were to be scored by each applicant was 55. These marks are calculated on the basis of the marks obtained in the SSC Examination, PTC Examination and additional mark is given for additional qualification obtained in any of the special subjects. The break-up of the calculation of such marks is 35% marks are given to SSC marks, 55% marks are given to the PTC marks and the applicants having additional special qualification are given 10% marks. There is no dispute that none of the petitioners have obtained 55% marks. Therefore, in view of the said circular the petitioners are not entitled to be called for interview.

6. Seen in the above context, there is no manner of doubt that the petitioners who are working as primary teachers though possessed requisite qualification as per Government Circular dated 1.9.1973 having failed to obtain 55% marks as required under Government Resolution dated 14.7.1983 cannot be said to be possessing requisite qualification to be called for interview. Therefore, they were rightly not called for interview by the respondents. It may be appreciated that Circular dated 14.7.1983 superceded all previous circulars whereunder directive principle of selection of primary teacher were incorporated. To more clarify be it stated that circular dated 14.7.1983 is the last circular and, therefore, it is to be acted upon.

7. In view of the discussion made hereinabove, the petition fails and accordingly it is dismissed with no order as to costs. Rule is discharged.

3.3.2000. (A.M. Kapadia, J.)

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(karan)